

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Meeteetse, Wyoming)

)
) **DOCKET FILE COPY ORIGINAL**
) MB Docket No. 05-243
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)

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

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Federal Communications Commission
Office of Secretary

COUNTERPROPOSAL

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3 POINT MEDIA – COALVILLE, LLC

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SUMMARY

This Counterproposal is filed on behalf of Millcreek Broadcasting, LLC, Simmons SLC-LS, LLC, 3 Point Media – Coalville, LLC, and College Creek Broadcasting LLC, licensees of, and applicants for, all but seven of the Stations implicated in this Counterproposal. The Joint Parties are filing this Counterproposal in response to the *Notice of Proposed Rule Making*, DA 05-2205, released on July 29, 2005, in this proceeding. The Joint Parties propose a number of changes to the FM Table of Allotments which, taken together, will (i) establish first local services in the communities of Kaysville, Milford, American Fork, Utah (with a combined population of 43,743), (ii) result in a net gain in radio service to 3,629,760 people, and (iii) provide coverage to a white area consisting of 270 persons. The consent statements of the licensees of the stations that are not owned by the Joint Parties are attached to this Counterproposal. Finally, in this Counterproposal, the Joint Parties request that the Commission issue Orders to Show Cause to Citicasters Licenses, L.P., the licensee of two stations implicated in this proposal, to show why their channels should not be changed at their current sites.

This Counterproposal conflicts with the *NPRM* proposal to allot Channel 295C to Meeteetse, Wyoming, due to the proposed allotment of Channel 259A to Ashton, Idaho. Under the FM allotment priorities, the Commission should favor the provision of local service to white area and the provision of first local services at Kaysville, Milford, American Fork, Utah (with a combined population of 43,743). Nevertheless, the Joint Parties offer a substitute channel at Meeteetse so that both proposals can be granted.

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Attn: Assistant Chief, Audio Division
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COUNTERPROPOSAL

Millcreek Broadcasting, LLC ("Millcreek"), licensee of Stations KNJQ(FM), Manti, Utah, KUUU(FM), South Jordan, Utah, and KUDD(FM), Roy, Utah; Simmons SLC-LS, LLC ("Simmons"), licensee of Stations KDWY(FM), Diamondville, Wyoming, KAOX(FM), Kemmerer, Wyoming, and KRAR(FM), Brigham City, Utah; 3 Point Media - Coalville, LLC ("3 Point"), licensee of Station KCUA(FM), Naples, Utah; and College Creek Broadcasting LLC ("College Creek"), successful bidder and applicant for four vacant auction allotments (together, the "Joint Parties"), by their counsel, hereby submit this counterproposal to the *Notice of Proposed Rule Making*, DA 05-2205 (rel. Jul. 29, 2005) ("*NPRM*") in the above-captioned proceeding. The Joint Parties propose a number of changes to the FM Table of Allotments which, taken together, will provide first local services to three communities and substantially increase service to many listeners. The following amendments to the FM Table of Allotments are requested (listed alphabetically):

Community	Channel	
	Existing	Proposed
Fruita, CO	255C3, 260C	268C3, 260C
Ashton, ID	243C2	259A
Dubois, ID	286A	243A
American Fork, UT	---	286C
Brigham City, UT	264C, 295C	264C
Centerville, UT	289C	290C
Huntington, UT	296C2	297C2
Kaysville, UT	---	298C
Manti, UT	286C	--- ¹
Milford, UT	---	285C
Naples, UT	223C3	253C2
Oakley, UT	268C	268C, 288C
Orem, UT	298C	--- ²
Randolph, UT	272C	272C, 300C
Roosevelt, UT	232C1, 253C2	232C1
Roy, UT	300C	--- ³
South Jordan, UT	223C2	223A
Spanish Fork, UT	293C	294C
Vernal, UT	288C2	245C2
Woodruff, UT	264C	264C, 296C
Diamondville, WY	287C2	223C1
Evanston, WY	252C2, 291C	252C2, 292C
Kemmerer, WY	297C2	--- ⁴
Meeteetse, WY	---	288C ⁵
Superior, WY	293C	298C
Thayne, WY	290C1	286C1

In support hereof, the Joint Parties state as follows:

I. PRELIMINARY MATTERS

1. The Joint Parties own all but seven of the stations involved in this counterproposal. With respect to seven of these remaining stations, the Joint Parties have reached agreement with the licensees of five of those stations for the changes proposed herein.

¹ Manti will continue to be served by Station KMTI(AM).

² Orem will continue to be served by NCE Station KOHS(FM).

³ Roy will continue to be served by Station KANN(AM).

⁴ Kemmerer will continue to be served by Station KMER(AM).

⁵ The Joint Parties are also proposing, in the alternative, Channels 292C, 267C, and 265C at Meeteetse.

The consent statements of the licensees of KLCY-FM, Vernal, Utah, KENZ(FM), Orem, Utah, KBMG(FM), Evanston, Wyoming, KEQO(FM), Idaho Falls, Idaho and KIFX(FM), Roosevelt, Utah, are attached hereto as Exhibit 1. The underlying agreements provide that Millcreek will reimburse the licensees for their expenses in making the changes, and Millcreek hereby states that it will do so.⁶ The Joint Parties request that the Commission issue Orders to Show Cause to Citicasters Licenses, L.P. ("Citicasters"), the licensee of Stations KOSY-FM, Spanish Fork, Utah and KXRV(FM), Centerville, Utah, to show cause why their channels should not be changed at their current sites as set forth herein. The Joint Parties hereby state that they will reimburse Citicasters, the licensee, for its reasonable expenses in changing channels in accordance with *Circleville, Ohio*, 8 FCC 2d 159 (1967). Thus, this proposal complies with the Commission's policy in *Columbus, Nebraska*, 59 RR 2d 1185 (1986).

2. This counterproposal will establish first local services in the communities of Kaysville, Utah, Milford, Utah, and American Fork, Utah. The Joint Parties hereby state that they will apply for the respective channels and construct the facilities if their respective applications are granted.

3. The Joint Parties hereby state that pursuant to Section 1.420(j), they have not paid nor promised to pay, in any agreement, any licensee, permittee or applicant for withdrawing an expression of interest, dismissing an application or forbearing to file an expression of interest or application.

II. CONFLICT WITH THE *NPRM*

4. As indicated in the attached Engineering Statement, this proposal conflicts with the *NPRM* proposal to allot Channel 259C to Meeteetse, Wyoming, due to the proposed

⁶ Millcreek is a party to the agreements with each of the affected stations. The Joint Parties have arranged among themselves that Millcreek will pay those expenses, including the expenses of Citicasters.

allotment of Channel 259A to Ashton, Idaho. However, the Joint Parties offer the following substitute channel, Channel 288C , that can be allotted to Meeteetse and avoid the conflict.⁷ If for some reason the substitute channel cannot be allotted, the Commission should favor first local services at American Fork, Utah (2000 U.S. Census pop. 21,941), Milford, Utah (2000 U.S. Census pop. 1,451) and Kaysville, Utah (2000 U.S. Census pop. 20,351) and the provision of a first aural service to 270 persons, over a first local service to Meeteetse, Wyoming (2000 U.S. Census pop. 351) under its FM priorities. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

III. COMPLIANCE WITH THE COMMISSION'S TECHNICAL RULES

A. VACANT CHANNEL 285C, MILFORD, UTAH

5. The Joint Parties propose to allot Channel 285C at Milford, Utah as that community's first local service and will provide a first aural service to a "white area" with 270 persons.

1. Technical Studies

6. As indicated in the attached channel study, Figure 1, Channel 285C can be allotted to Milford, Utah in compliance with the Commission's spacing rules provided that a change is made at Manti, Utah. That change, and the other modifications that it requires in turn, will be discussed below. From the proposed site the station will provide a 70 dBu signal to Milford. *See* Figure 2. The population gain within the 60 dBu contour is 19,534 persons. *See* Figure 3. The Joint Parties hereby states that they will file an application specifying the new channel and construct the facilities if their application is granted.

⁷ In the alternative, the Joint Parties also offer the following substitute channels, Channels 292C, 267C, and 265C, that can be allotted to Meeteetse and avoid the conflict.

2. Community Indicia

7. The City of Milford, Utah, is not located within any Urbanized Area. Milford qualifies as a community for allotment purposes. Milford is located in Beaver County, Utah. It is listed in the 2000 Census with a population of 1,451 persons and therefore is presumed to have the status of a community for allotment purposes. *See Arnold and Columbia, California*, 7 FCC Rcd 6302, ¶ 12 (1992). It has a ZIP code (84571), many businesses, various churches, a fire department, a police station, a municipal airport, a court house, and various other community indicia. The United States Postal Service operates a post office in Milford, Utah. According to the city government website (www.milfordut.com), Milford was incorporated in 1903. The form of governance is manager by ordinance with an elected mayor and five city council members who serve four-year terms. The city government includes the following departments: administration, public works, recreation, city cemetery, library, airport and planning and zoning. Milford has a city manager, city treasurer, city recorder, building department and planning commission, and a senior citizen center. Milford provides the following services: water, sewer and garbage cans. The Beaver County School District operates the Milford Elementary School and Milford High School. A number of local businesses identify with the community by using Milford in their name including Milford Chevron, Milford Drug & Gifts, Milford Oak Tree Inn, Milford Drugs & Gifts, Milford Dental Clinic and Parts Plus of Milford. Among the businesses located in Milford include Snoop Sister Antiques & Gifts, Wells Fargo Bank, Circle Four Farms, Hong Kong Café, Hogs Breath Bar and Armadillo Express. Medical facilities located in Milford include the Beaver/Medford Medical Clinic, Milford Valley Long Term Care and Milford Valley Memorial Hospital. *See Exhibit 2.*

B. STATION KNJQ(FM), MANTI TO AMERICAN FORK, UTAH

1. Technical Studies

8. In order to allot Channel 285C to Milford, Utah, Station KNJQ(FM), Manti, Utah, must change its community of license from Manti to American Fork, Utah. As indicated in the attached channel study, Figure 4, Channel 286C can be allotted to American Fork, Utah in compliance with the Commission's spacing rules provided that a change is made at Centerville, Utah. That change, and the other modifications that it requires in turn, will be discussed below. From the proposed site the station will provide a 70 dBu signal to American Fork. See Figure 5. Station KNJQ(FM) is licensed to Millcreek, one of the Joint Parties.

2. Change in Community of License

9. In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990), the Commission stated that in order to grant a change in community of license: (1) the proposed use of the channel must be mutually exclusive with its current use; (2) the existing community of license must retain local service; and (3) the proposed arrangement of allotments must be preferred over the existing arrangement under the Commission's allotment priorities.

10. Here, the attached channel study, Figure 4, demonstrates that the proposed allotment of Channel 286C at American Fork is mutually exclusive with its current allotment at Manti. Manti will retain existing local service, because Station KMTI(AM) will remain licensed to Manti. The provision of first local service at American Fork, Utah (2000 U.S. Census pop. 21,941), Milford, Utah (2000 U.S. Census pop. 1,451) and Kaysville, Utah (2000 U.S. Census pop. 20,351) under priority (3), and a first aural service to 270 persons under priority (1), is preferred over the retention of a second local service to Manti (2000 Census pop. 3,040) under

priority (4). The allotment of Channel 286C to American Fork will result in a net gain in 60 dBu service to 1,336,986 people. *See Figure 6.* The loss area will continue to receive adequate aural service. *See Figure 7.*

11. American Fork is located within the Provo-Orem Urbanized Area. Therefore, this relocation implicates the Commission's policy concerning the migration of stations from rural areas to urban areas. *See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) ("Tuck").* Accordingly, a *Tuck* showing is included in order to demonstrate the independence of American Fork from Provo and Orem.

12. Under *Tuck*, in making the determination whether to award an urbanized community a first local service preference, the Commission will consider (1) the extent to which the station will provide service to the entire Urbanized Area, (2) the relative populations and proximity of the suburban and central city, and, most importantly, (3) the independence of the suburban community. *Tuck, 3 FCC Rcd at 5377-78.* In this case, from the proposed transmitter site, KNJQ(FM) would place a 70 dBu contour over 50% of the Provo-Orem Urbanized Area. American Fork's population (2000 U.S. Census 21,941) is 21% of that of Provo (2000 U.S. Census 105,166), and 26% of that of Orem (2000 U.S. Census 84,324). American Fork is located 19.1 kilometers from Provo and 12.5 kilometers from Orem. These figures exceed those of other suburban communities granted a first local preference. *See, e.g., Old Fort, Fletcher, and Asheville, North Carolina; Surgoinsville, Tennessee, and Augusta, Georgia, 18 FCC Rcd 12181 (2003) (Fletcher's population is 6.7% of that of Asheville, and Fletcher is located 17 kilometers from Asheville); Malvern and Bryant, Arkansas, 14 FCC Rcd 3576 (1999) (Bryant's population is 3% of that of Little Rock, and Bryant is located 20 miles from Little Rock).* Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of

independence. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (“*Headland*”). The following analysis of the eight *Tuck* factors demonstrates the independence of American Fork from Provo and Orem.

(1) *Extent to which the residents of American Fork work in American Fork.*

According to 2000 Census figures, 2,746 of the 8,946 employed individuals in American Fork, or 31%, work at their place of residence. *See* Exhibit 3. This percentage exceeds that of other independent communities. *See, e.g., Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001) (11.3% of working-age residents worked in community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996) (13% of Gilbert’s working population actually worked in Gilbert).

(2) *Newspapers and other media that cover American Fork’s local needs and interests.* The *American Fork Citizen* is the community’s weekly paper published by North County Newspapers. It contains sections on local government, local schools, local businesses, local recreation, local entertainment, and local sports. The *American Fork Citizen* also contains obituaries, classifieds, and editorials. *See* Exhibit 3.

(3) *Community leaders and residents perceive American Fork as being separate from Provo and Orem.* American Fork is located in Utah County and is named after the river that it is located on. It was settled by Mormon pioneers in 1850 and incorporated in 1853. American Fork was originally settled as an agricultural community, but as its population expanded many industrial companies located in American Fork. Today, American Fork is home to the Utah Valley Business Park, which is where companies such as Dentrrix Dental Systems, Twin Labs, and Symantec have

located. The American Fork website touts American Fork as tenderly balancing the small-town it was founded on with big-city job opportunities. See Exhibit 3.

(4) ***American Fork has its own local government and elected officials.*** The City of American Fork is governed by a mayor and a five-member City Council. The City Council meets on the second and fourth Tuesday of each month, and each Council member is responsible for a number of committees. American Fork also has a City Operator, Library Director, Treasurer, Web Master, Recorder, Engineer, Recreation Director, and City Attorney. The City of American Fork's departments include, Ambulance, Arts, Building Inspection, Cemetery, Fire, Library, Parks, Planning, Police, Public Works, Recreation, Streets, Utilities, and Water. The City has its own website located at <www.afcity.com>. See Exhibit 3.

(5) ***American Fork has its own zip code.*** The zip code assigned to American Fork is 84003 and the U.S. Postal Service operates five post offices in American Fork. The phone listings for American Fork government offices can be found on the American Fork government website. See Exhibit 3.

(6) ***American Fork has its own commercial establishments and health facilities.*** American Fork is home to the American Fork Chamber of Commerce, the Utah Valley Business Park, and hundreds of commercial establishments. A number of businesses identify with the community by using "American Fork" in their name, including American Fork Storage, American Fork Clinic, American Fork Dry Cleaning, American Fork Shoe Repair, American Fork Taco Time, American Fork Vision Center, and Bank of American Fork. See Exhibit 3.

American Fork is home to the American Fork Hospital. Health care is also provided to the community of American Fork by a number of group and sole practitioners. American Fork is also home to a number of religious and community organizations, including American Fork Tabernacle, Calvary Church, a number of branches of the Church of Jesus Christ of Latter Day Saints, Rotary Club, Lions Club, Kiwanis Club, and Veterans of Foreign Wars. *See Exhibit 3.*

(7) ***American Fork is a separate and distinct advertising market from Orem and Provo.*** The *American Fork Citizen* provides the businesses of American Fork with a place to advertise to the residents of American Fork without relying on the Orem and Provo advertising markets. *See Exhibit 3.*

(8) ***American Fork has its own schools, library, police department, and fire department.*** The Alpine School District administers the public schools in American Fork. American Fork currently has seven elementary schools, two junior high schools, and two high schools. The American Fork Public Library is administered by the City of American Fork and provides traditional library services to the community of American Fork. American Fork also has its own police, ambulance, and fire departments. *See Exhibit 3.*

13. Millcreek reiterates that as the licensee of KNJQ(FM), it will apply for Channel 286C to serve American Fork at a new transmitter site and construct the facility if a permit is granted.

C. STATION KXRV(FM), CENTERVILLE, UTAH

14. In order to allot Channel 286C to American Fork, Utah, Station KXRV(FM), Centerville, Utah, must change its channel from 289C to 290C. Channel 290C can be allotted to Centerville at the allotment's current coordinates in compliance with the Commission's spacing

rules provided that changes are made at Evanston, Wyoming, Spanish Fork, Utah, Thayne, Wyoming, and Vernal, Utah as discussed below. *See* Figure 8. The Joint Parties request that the Commission issue an Order to Show Cause to Citicasters, the licensee of Station KXRV(FM), Centerville, Utah, to show why KXRV(FM)'s channel should not be changed at its current site. Millcreek reiterates that it will reimburse the licensee for its reasonable expenses in changing channel in accordance with *Circleville, Ohio, supra*.

D. STATION KLCY-FM, VERNAL, UTAH

15. In order to allot Channel 290C to Centerville, Channel 290A must be deleted at Vernal, Utah. Station KLCY-FM, Vernal, Utah, currently operates on Channel 290A, and has a construction permit to change to Channel 288C2.⁸ The Joint Parties propose to allot Channel 245C2 at Vernal for use by KLCY-FM. Channel 245C2 can be allotted to Vernal at the coordinates specified in the station's application in compliance with the Commission's spacing rules. *See* Figure 65. It should be noted that Channel 245A can also be allotted at the station's current Class A transmitter site location. *See* Figure 66. The Joint Parties have entered into an agreement with the licensee of KLCY-FM, Ashley Communications, Inc., regarding the change. The licensee's consent to the change in channel is attached hereto in Exhibit 1. Millcreek reiterates that it will reimburse the licensee for its expenses in making the change in channel.

E. STATION KOSY-FM, SPANISH FORK, UTAH

16. In order to make the proposed allotments at Centerville, Station KOSY-FM, Spanish Fork, Utah, must change from Channel 293C to Channel 294C. Channel 294C can be allotted to Spanish Fork at the station's current coordinates in compliance with the Commission's spacing rules provided that a change is made at Brigham City, Utah. *See* Figure

⁸ BPH-20010306ABN.

10. That change will be discussed below. The Joint Parties request that the Commission issue an Order to Show Cause to Citicasters, the licensee of Station KOSY-FM, Spanish Fork, Utah, to show why KOSY-FM's channel should not be changed at its current site. Millcreek reiterates that it will reimburse the licensee for its reasonable expenses in changing channel in accordance with *Circleville, Ohio, supra*.

17. The Joint Parties acknowledge that the Commission determined that this exact proposal was technically defective in *Ammon and Dubois, Idaho*, 20 FCC Rcd 10626 (2005). However, as indicated in the Joint Parties' Petition for Reconsideration filed in that proceeding, the Joint Parties merely propose to change the channel of Station KOSY-FM, Spanish Fork, Utah from channel 293C to 294C at its current transmitter site. KOSY-FM has been operating from this transmitter site since 2003. The Bureau has twice granted applications for KOSY-FM which specified that transmitter site. See File Nos. BPH-19990524IF and BMPH-20011206AAT. Both of those applications demonstrated coverage of the community of Spanish Fork by means of a supplemental showing. The transmitter is located at a high elevation on Farnsworth Peak, and has no difficulty placing a 70 dBu contour over the community. Having granted those applications, the Bureau has confirmed that the transmitter site is technically feasible. It cannot now accuse the Joint Parties of specifying an infeasible site. Indeed, the Bureau's statement that the proposed Channel 294C allotment "does not provide city-grade coverage to any part of the community of Spanish Fork" is directly contradicted by the current operation of the station, with the Commission's authorization, on the first-adjacent channel.

18. It is true that the Commission generally does not take terrain into account in allotment cases to demonstrate community coverage. But, the Commission recognizes an exception to the general rule, and will make an allotment when community coverage can be

demonstrated from a specific transmitter site, and steps have been taken to ensure that the transmitter site will be available. *See Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988). This case qualifies for the *Woodstock* exception. A specific transmitter site has been identified, and all the necessary approvals have been obtained. Indeed, the site is in use by the station, and community coverage has been demonstrated to the Commission's satisfaction. Any other action would elevate form over substance. *See Tullahoma, Tennessee and Madison, Alabama, supra* (applying *Woodstock* exception for station's current transmitter site). Accordingly, the proposed allotment of Channel 294C at Spanish Fork is acceptable under the Commission's Rules.⁹

F. STATION KRAR(FM), BRIGHAM CITY TO WOODRUFF, UTAH

19. In order to allot Channel 294C to Spanish Fork, Utah, Station KRAR(FM), Brigham City, Utah, must change its channel from 295C to 296C and relocate to Woodruff, Utah as that community's second local service.

1. Technical Studies

20. As indicated in the attached channel study, Figure 11, Channel 296C can be allotted to Woodruff in compliance with the Commission's spacing rules provided that changes are made at Kemmerer, Wyoming, and Huntington, Utah. Those changes are discussed herein. From the proposed site the station will provide a 70 dBu signal to Woodruff. *See* Figure 12.

⁹ Beyond what was stated earlier, there is another impact with respect to having a different standard at the allotment stage. If a station has used a supplemental showing at the application state, then its channel could never be changed by rule making. The Bureau's holding in *Ammon and Dubois, Idaho* would allow any licensee to shield itself from ever having to make an involuntary channel change. Obviously, the Bureau did not intend to carve out an exception to this long standing policy of being able to order channel changes under Section 1.87 of the Commission's Rules.

2. Change in Community of License

21. The relocation of KRAR(FM) from Brigham City to Woodruff complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure 11, demonstrates that the proposed allotment of Channel 296C at Woodruff is mutually exclusive with the current allotment of Channel 295C at Brigham City. Brigham City will retain existing local service, because Stations KXOL(AM) and KEGH(FM) will remain licensed to Brigham City. The provision of a second local service at Woodruff (2000 U.S. Census pop. 194), as well as first local services at American Fork, Utah (2000 U.S. Census pop. 21,941), Milford, Utah (2000 U.S. Census pop. 1,451) and Kaysville, Utah (2000 U.S. Census pop. 20,351) under priority (3), and first aural service to 270 persons under priority (1), is preferred over the retention of a third local service to Brigham City (2000 Census pop. 17,411) under priority (4). The allotment of Channel 296C to Woodruff will result in a net gain in 60 dBu service to 873,349 people. *See* Figure 13. The loss area will continue to receive adequate aural service. *See* Figure 14.

22. Woodruff is not located in an Urbanized Area and the proposed 70 dBu contour of KRAR(FM) will not encompass over 50% of any Urbanized Area. Therefore, this relocation does not implicate the Commission's policy regarding the migration of stations into urban areas. *See Tuck, supra*.

23. Woodruff enjoys the attributes that the Commission traditionally associates with a community. Woodruff is listed in the 2000 U.S. Census with a population of 194 persons and therefore is presumed to have the status of a community for allotment purposes. *See Arnold and Columbia, California, 7 FCC Rcd 6302 (1992)*. The Commission has recently held that

Woodruff has the status of a community for allotment purposes. *See Opal, Wyoming, et al.*, 20 FCC Rcd 12994 (2005).

24. Simmons reiterates that as the licensee of KRAR(FM), it will apply for Channel 296C to serve Woodruff at a new transmitter site and construct the facility if a permit is granted.

G. STATION KAOX(FM), KEMMERER, WYOMING TO SHELLEY, IDAHO

1. Technical Studies

25. In order to allot Channel 296C to Woodruff, Utah, Station KAOX(FM), Kemmerer, Wyoming, must change community of license from Kemmerer to Shelley, Idaho.¹⁰ Channel 297C1 can be allotted to Shelley with a change in the station's current coordinates in compliance with the Commission's spacing rules provided that a change is made Idaho Falls, Idaho. *See* Figure 15. From the proposed site the station will provide a 70 dBu signal to Shelley. *See* Figure 16. Station KAOX(FM) is licensed to Simmons, one of the Joint Parties. Simmons hereby states that it will file an application for the change in transmitter site and channel.

2. Change in Community of License

26. The relocation of KAOX(FM) from Kemmerer to Shelley complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure 15, demonstrates that the proposed allotment of Channel 296C1 at Shelley is mutually exclusive with the current allotment of Channel 297C2 at Kemmerer. Kemmerer will retain existing local service, because Station KMER(AM) will remain licensed to there. The provision of first local service at American Fork, Utah (2000 U.S. Census pop. 21,941), Milford, Utah (2000 U.S. Census pop. 1,451) and Kaysville, Utah (2000 U.S. Census pop. 20,351), under priority (3), and first aural service to 270 persons under priority (1), is preferred over the retention of a second

¹⁰ KAOX(FM) has a construction permit to downgrade to Channel 297C2, and has filed for a license to cover. *See* BPH-20041020AAD; BLH-20050404ACZ.

local service to Kemmerer (2000 Census pop. 2,651) under priority (4). The allotment of Channel 296C1 to Shelley will result in a net gain in 60 dBu service to 253,935 people. *See* Figure 17. The loss area will continue to receive adequate aural service. *See* Figure 18.

27. Shelley enjoys the attributes that the Commission traditionally associates with a community. Shelley is listed in the 2000 U.S. Census with a population of 3,813 persons and therefore is presumed to have the status of a community for allotment purposes. *See Arnold and Columbia, California*, 7 FCC Rcd 6302 (1992). The Commission has recently held that Shelley has the status of a community for allotment purposes. *See Shelley and Island Park, Idaho*, 12 FCC Rcd 13718 (1997).

H. STATION KEQO(FM), IDAHO FALLS, IDAHO

28. In order to allot Channel 296C1 to Shelley, Station KEQO(FM), Idaho Falls, must change from Channel 296C1 to Channel 300C1. Channel 300C1 can be allotted to Idaho Falls at a new transmitter site in compliance with the Commission's spacing rules. *See* Figure 19. The station will continue to place a 70 dBu contour over Idaho Falls. *See* Figure 20. Sand Hill has provided a consent statement in which it states that, as the licensee of KEQO(FM), it will apply for Channel 300C1 to serve Idaho Falls at its current transmitter site and construct the facility if a permit is granted. *See* Exhibit 1. Millcreek reiterates that it will reimburse the licensee for its expenses in making the change in channel.

I. NEW CHANNEL 296C2, HUNTINGTON, UTAH

29. In order to allot Channel 296C to Woodruff, the unbuilt station on Channel 296C2, Huntington, Utah, must change to Channel 297C2. Channel 297C2 can be allotted to Huntington at the allotment's current coordinates in compliance with the Commission's spacing rules provided that a change is made at Orem, Utah. *See* Figure 22. That change will be discussed below.

30. The Channel 296C2 allotment at Huntington was awarded to College Creek in FM Auction 37, and College Creek has been granted a permit to construct this station. See BNPH-20041227ACP. The Joint Parties acknowledge that the Commission determined that this proposal was technically defective in *Ammon and Dubois, Idaho*, 20 FCC Rcd 10626 (2005).¹¹ However, as indicated in the Joint Parties' Petition for Reconsideration filed in that proceeding, when the Joint Parties' proposal was filed, the application for Huntington had not been granted and it was possible that the allotment could have been awarded to other applicants for this allotment if College Creek defaulted. Thus, in its proposal, the Joint Parties demonstrated that the channel substitution could be made at each of the transmitter sites specified by the other three applicants. Specifically, the Joint Parties furnished channel spacing studies demonstrating that the substitution of Channel 297C2 for Channel 296C2 can be made at each of the three other applicants' transmitter sites in compliance with Section 73.207. However, without reason or explanation, the Bureau determined that the Joint Parties' proposal for Channel 237C2 at Huntington was defective because it would require too tall a tower. The Bureau's conclusion is illogical because if there were any defect, the application would not have been granted. The Joint Parties merely had to show that the channel substitution could be made. It was not incumbent upon the Joint Parties to demonstrate that the applications were grantable. Now that the application has been granted, the Commission staff should not be using the rule making to somehow undo the grant or shield the channel from being changed with the permittee's consent. Therefore, there is no defect in the Joint Parties' proposal for Channel 297C2 at Huntington, proposed herein.

¹¹ The only difference between the Joint Parties proposal here and in *Ammon* is the channel proposed. Here, the Joint Parties are proposing Channel 297C2, while in *Ammon*, Channel 237C2 was proposed.

31. College Creek holds the construction permit for Channel 296C2 at Huntington.¹² College Creek hereby states that it will file an application for the new channel and construct the facilities if its application is granted.

J. STATION KENZ(FM), OREM, UTAH TO KAYSVILLE, UTAH

32. In order to allot Channel 297C2 at Huntington, Channel 298C must be deleted at Orem, Utah. Citadel Broadcasting Company, licensee of Station KENZ(FM), Channel 298C, Orem, Utah, has agreed to relocate the Station to Kaysville, Utah as that community's first local service. See Exhibit 1.

1. Technical Studies

33. As indicated in the attached channel study, Figure 25, Channel 298C can be allotted to Kaysville in compliance with the Commission's spacing rules provided that changes are made for Station KUDD(FM) at Roy, Utah as discussed below, and Station KAOX(FM), Kemmerer, Wyoming, as previously discussed. From the proposed site the station will provide a 70 dBu signal to Kaysville. See Figure 26.

2. Change in Community of License

34. The relocation of KENZ(FM) from Orem to Kaysville complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure 25, demonstrates that the proposed allotment of Channel 298C at Kaysville is mutually exclusive with the current allotment of Channel 298C at Orem. Orem will retain existing local service, because Station KOHS(FM) will remain licensed to Orem. The provision of first local service at American Fork, Utah (2000 U.S. Census pop. 21,941), Milford, Utah (2000 U.S. Census pop. 1,451) and Kaysville, Utah (2000 U.S. Census pop. 20,351), under priority (3), and first aural

¹² BNP-20041227ACP.

service to 270 persons under priority (1), is preferred over the retention of a second local service to Orem (2000 Census pop. 84,324) under priority (4). The allotment of Channel 298C to Kaysville will result in a net gain in 60 dBu service to 225,679 people. *See* Figure 27. The loss area will continue to receive adequate aural service. *See* Figure 28.

35. Orem is one of the principal cities in the Provo-Orem Urbanized Area, while Kaysville is located within the Ogden-Layton Urbanized Area. Therefore, this relocation does not implicate the Commission's concern regarding the migration of stations from underserved rural areas to urban areas. Instead, KENZ would be moving from the center of one Urbanized Area to a suburb in another. Nevertheless, consistent with prior cases, a Tuck showing is supplied. *See Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768 (2001).

36. In this case, from the proposed transmitter site, KENZ(FM) would place a 70 dBu contour over 100% of the Ogden-Layton Urbanized Area. Kaysville's population (2000 U.S. Census 20,351) is 26% of that of Ogden (2000 U.S. Census 77,226), and 35% of that of Layton (2000 U.S. Census 58,474). Kaysville is located 21.7 kilometers from Ogden and 5.3 kilometers from Layton. These figures exceed those of other suburban communities granted a first local preference. *See, e.g., Old Fort, Fletcher, and Asheville, North Carolina; Surgoinsville, Tennessee, and Augusta, Georgia*, 18 FCC Rcd 12181 (2003) (Fletcher's population is 6.7% of that of Asheville, and Fletcher is located 17 kilometers from Asheville); *Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576 (1999) (Bryant's population is 3% of that of Little Rock, and Bryant is located 20 miles from Little Rock). The following analysis of the eight *Tuck* factors demonstrates the independence of Kaysville from Ogden and Layton.

(1) ***Extent to which the residents of Kaysville work in Kaysville.*** According to 2000 Census figures, 1,706 of the 8,535 employed individuals in Kaysville, or 20%,

work at their place of residence. See Exhibit 4. This percentage exceeds that of other independent communities. See, e.g., *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001) (11.3% of working-age residents worked in community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996) (13% of Gilbert's working population actually worked in Gilbert).

(2) ***Newspapers and other media that cover Kaysville's local needs and interests.*** The *Kaysville City Newsletter* is a quarterly newsletter published by the City of Kaysville. It contains information on government services, community events, new government regulations, elections, environmental issues, and safety issues. The *Kaysville City Newsletter* is delivered by mail to all residents of Kaysville, and an electronic version can be viewed online at <www.kaysvillecity.com/news/newsletters/index.htm>. See Exhibit 4.

(3) ***Community leaders and residents perceive Kaysville as being separate from Ogden and Layton.*** Kaysville was settled in 1850 and incorporated in 1868. It was the first city incorporated in Davis County and the 27th in the Utah Territory. The City was one of the first Mormon communities in Utah and is named after William Kay who was one of its first settlers and its first Bishop. Today, Kaysville is one of Utah's fastest growing cities. See Exhibit 4.

(4) ***Kaysville has its own local government and elected officials.*** The City of Kaysville is governed by a six-member City Council. The City Council meets on the first and third Tuesday of each month, and each Council member is responsible for a number of Kaysville's departments, boards and committees. These departments, boards and committees include, Library, Planning, Recreation, Administration, Finance, Community

Development, Fire, Parks, Police, Power, and Public Works. The City employs 64 full-time employees, and has its own website located at <www.kaysvillecity.com>. See Exhibit 4.

(5) ***Kaysville has its own zip code.*** The zip code assigned to Kaysville is 84037 and the U.S. Postal Service operates three offices in Kaysville. The phone listings for Kaysville government offices can be found on the Kaysville government website. See Exhibit 4.

(6) ***Kaysville has its own commercial establishments and health facilities.*** Kaysville is home to the Kaysville Area Chamber of Commerce and the Kaysville Business Park, which is a 175-acre business park that was developed by the City to attract businesses. A number of businesses identify with the community by using “Kaysville” in their name, including Kaysville Apartments, Kaysville Family Barber Shop, Kaysville Institute, Kaysville Orthodontics, Kaysville Theatre, Kaysville Veterinary Clinic, Orion Wireless Kaysville, and Wells Fargo Kaysville. Hotels in Kaysville include Far West Motel and Mountain Creek Inn. Restaurants in Kaysville include Arctic Circle Restaurant, Company Grill, Frosted Rock, Pepperbellys, Subway, Taco Maker, B C Chicken, and Jake’s. See Exhibit 4.

Health care is provided to the community of Kaysville by a number of group and sole practitioners. Kaysville is also home to a number of religious and community organizations including the Kaysville Bible Church, True Vine Baptist Church, and a number of branches of the Church of Jesus Christ of Latter Day Saints. See Exhibit 4.

(7) ***Kaysville is a separate and distinct advertising market from Ogden and Layton.*** The efforts of the City of Kaysville to bring businesses to Kaysville have helped

create a separate and distinct advertising market from Ogden and Layton. The City established the Kaysville Business Park and recently completed renovation of Kaysville's Historic Main Street. *See Exhibit 4.*

(8) *Kaysville has its own schools, library, police department, and fire department.* The Davis County School District administers the public schools in Kaysville, which include Davis High School, Fairfield Junior High, Kaysville Junior High, Burton Elementary, Columbia Elementary, Creekside Elementary, Kaysville Elementary, Morgan Elementary, Windridge Elementary, and three vocational schools. The Kaysville Public Library is administered by the City of Kaysville and provides traditional library services to the community of Kaysville. Kaysville also has its own police and fire departments. The Kaysville Police Department consists eighteen officers, and the Kaysville Fire Department is a volunteer department with 35 fire fighters. *See Exhibit 4.*

37. Citadel has furnished a statement indicating that as the licensee of KENZ(FM), it will apply for Channel 298C to serve Kaysville at a new transmitter site and construct the facility if a permit is granted. *See Exhibit 1.* Millcreek reiterates that it will reimburse the licensee for its expenses in making the change in channel.

K. STATION KUDD(FM), ROY TO RANDOLPH, UTAH

38. In order to allot Channel 298C to Kaysville, Utah, Station KUDD(FM), Roy, Utah, must relocate on Channel 300C and change its community of license to Randolph, Utah as that community's second local service.